

1937

c 351 Cemetery Act

Ontario

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II. INTERMENT OF THE DEAD.

CHAPTER 351.

The Cemetery Act.

INTERPRETATION.

1. In this Act,—

- "Cemetery." (a) "Cemetery" shall mean and include any land which is set apart or used as a place for the interment of the dead or in which human bodies have been buried; R.S.O. 1927, c. 317, s. 1, cl. (a).
- "Columbarium." (b) "Columbarium" shall mean any structure designed for the purpose of storing the ashes of human remains which have been cremated;
- "Crematorium." (c) "Crematorium" shall mean a building fitted with the proper appliances for the purpose of the incineration and cremation of human remains, and shall include everything incidental or ancillary thereto; 1932, c. 40, s. 2.
- "Local board." (d) "Local board" shall mean the local board of health of a municipality in which it is proposed to establish or in which there is a cemetery;
- "Owner." (e) "Owner" shall mean the person owning, controlling or managing a cemetery;
- "Regulations." (f) "Regulations" shall mean regulations made by the Department of Health under the authority of this Act. R.S.O. 1927, c. 317, s. 1, cls. (b-d).

PART I.

PROVISIONS APPLICABLE TO ALL CEMETERIES.

ESTABLISHMENT AND ENLARGEMENT OF CEMETERIES.

- Approval of Department of Health. 2. A cemetery shall not be established or enlarged until the approval of the Department of Health has been applied for and obtained in the manner hereinafter provided. R.S.O. 1927, c. 317, s. 2.

3. An application for such approval shall be made in writing to the local board, and the applicant shall submit therewith a detailed plan and description in duplicate of the land proposed to be acquired or used for cemetery purposes together with such other information as the regulations may require. R.S.O. 1927, c. 317, s. 3.

Applica-
tion and
material.

4. The application and one of the duplicates of the plan and description of the land and all other material filed with the application shall be transmitted to the Department of Health together with a statement of the opinion of the local board thereon. R.S.O. 1927, c. 317, s. 4.

Transmis-
sion to
Depart-
ment of
Health.

5.—(1) The approval of the Department of Health shall be by order in writing signed by the chairman and secretary, and shall contain a sufficient description of the cemetery proposed to be established or of the land which is to be annexed to the existing cemetery.

Approval

(2) The order may be registered in the proper registry or land titles office, and upon its registration the cemetery may be established or enlarged as the order may direct. R.S.O. 1927, c. 317, s. 5.

Registra-
tion.

6. Any person who establishes a cemetery and uses it, or enlarges any cemetery, without the approval of the Department of Health shall incur a penalty of not less than \$100 nor more than \$500. R.S.O. 1927, c. 317, s. 6.

Penalty for
non-com-
pliance.

7. The expenses of the Department of Health shall be paid by the applicant. R.S.O. 1927, c. 317, s. 7.

Expenses of
Depart-
ment of
Health.

POWERS OF BOARDS, COMMISSION AND OFFICERS.

8. The Department of Health may make regulations in the manner provided by *The Public Health Act* respecting cemeteries, and may impose penalties for the contravention thereof and such regulations may be general in their application or may upon the recommendation of any local board be varied as to any cemetery within its jurisdiction. R.S.O. 1927, c. 317, s. 8.

Power to
make regu-
lations.
Rev. Stat.,
c. 299.

9. The medical officer of health or sanitary inspector or any officer of the local board may at any time enter into and upon any cemetery within the limits of the municipality and examine and inquire into the condition of the cemetery and whether the provisions of this Act and of the regulations are observed. R.S.O. 1927, c. 317, s. 9.

Powers of
certain
officers.

Cemetery
commis-
sion.

10.—(1) There shall be in every county and provisional judicial district a commission to be known as "The Cemetery Commission." 1931, c. 68, s. 2 (1), *part*.

Commis-
sion,—
composi-
tion of in
county
and pro-
visional
judicial
district.

(2) In the case of a county the commission shall consist of three members, one of whom shall be appointed by the Lieutenant-Governor in Council and the other two members, who may be members of the county council, shall be appointed annually by the county council at its first meeting, and in the case of a provisional judicial district the commission shall consist of the judge of the district, the sheriff and one other person to be named by the Lieutenant-Governor in Council. 1931, c. 68, s. 2 (1), *part*; 1933, c. 5, s. 2.

Chairman.

(3) The member appointed by the Lieutenant-Governor in Council shall be the chairman of the commission.

Duties of
commis-
sion.

(4) The commission shall be charged with the general supervision of cemeteries and burying grounds in the county or district.

Fees and
expenses,—
how
payable.

(5) The commission shall be paid such fees as may be fixed from time to time by Order-in-Council and shall also be entitled while engaged in the performance of their duties to reasonable and necessary travelling and other expenses, and such fees and expenses shall be payable by the county or district treasurer upon the certificate of the chairman of the commission. 1931, c. 68, s. 2 (1), *part*.

Duties and
powers.

(6) It shall be the duty of the commission and it shall have power,—

- (a) to visit and inspect cemeteries and when necessary for that purpose, to enter upon or pass over the lands of the owner or any other person;
- (b) to see that the provisions of this Act are observed by the owners of cemeteries and with the approval of the Department of Health to enforce their observance by prosecution for the penalties imposed by this Act;
- (c) to call for and collect such statistical and other information as the Department of Health may require, with regard to cemeteries and the care and management thereof;
- (d) to see that the affairs of any cemetery, or of any cemetery company or trust or other body of persons owning a cemetery are conducted with due regard to their contractual obligations to the lot owners and others interested in the cemetery, and for that purpose to have access to the books and accounts of any owner of a cemetery;

- (e) to report to the Department of Health from time to time, upon the enforcement and administration of this Act;
- (f) to see that every cemetery is properly fenced, kept clear of weeds and otherwise cared for in a proper manner and in accordance with this Act and the regulations;
- (g) to see that the provisions of this Act and the regulations with regard to burials and disinterments and the transportation of dead bodies are duly complied with, and to take proceedings against any person contravening any of such provisions;
- (h) to exercise, when so directed by the Lieutenant-Governor in Council, the powers which may be conferred upon a commissioner under *The Public Inquiries Act* for the purpose of investigating and reporting upon the conditions of any cemetery, and the conduct of its affairs or those of any corporation or trust or individual being the owner or in control of a cemetery. R.S.O. 1927, c. 317, s. 10 (2); 1931, c. 68, s. 2 (2). Rev. Stat., c. 19.

11. The Lieutenant-Governor in Council may appoint an officer of the Department of Health to examine and audit the books of account of any cemetery company whenever the Department certifies that it is in the interest of the lot owners that such examination should be made and it shall be the duty of the company to afford the officer so appointed access to such books of account for the purpose of examination and audit and such officer shall report the result of his findings to the Department. R.S.O. 1927, c. 317, s. 11; 1931, c. 68, s. 3. Appoint-
ment of
auditor.

POWERS AND DUTIES OF OWNERS.

12. All lots or plots in a cemetery when numbered and conveyed as burial sites or lots shall be indivisible, but may afterwards be held and owned in undivided shares. R.S.O. 1927, c. 317, s. 12. Lots In-
divisible.

13. When a lot in a cemetery or a compartment in a mausoleum or columbarium has been sold for a burial site or for a deposit therein of human remains it shall not be necessary to register the conveyance nor shall such lot or compartment be affected by any judgment, execution, mortgage or incumbrance. 1936, c. 7, s. 2. Registra-
tion of con-
veyance not
necessary.

Repurchas-
ing lots.

14. The owner of a cemetery may repurchase any lot previously sold or conveyed or any part of such lot in which no interment has been made. R.S.O. 1927, c. 317, s. 14.

Owner may
accept
devisees,
gifts, etc.

15.—(1) The owner may take and hold by grant, assignment, devise, bequest or otherwise any money or securities and apply the same in preserving, improving and embellishing the cemetery, upon the condition and in consideration of assuming and undertaking the duty and obligation of preserving and maintaining in a proper manner in perpetuity any particular lot, tomb, monument or enclosure in such cemetery or in any other cemetery or burying ground in the same municipality or in any other municipality in the same county or district, and any person may make such grant, assignment, devise or bequest upon such condition and for such consideration.

Taking lots
in cemetery
by grant
or devise.

(2) The owner may also take and hold by grant, assignment or devise from the owner thereof any lot in the cemetery for the purpose of maintaining the same in perpetuity or otherwise in the manner and subject to the provisions of the instrument of grant, assignment or devise.

May agree
to keep lots,
etc., in good
condition.

(3) The owner may agree to preserve and maintain in a proper manner in perpetuity the particular lot, tomb, monument or enclosure in any cemetery designated in such grant, assignment, devise, bequest or agreement.

Payment
over of
bequest.

(4) Personal representatives or trustees may pay over and transfer money or securities in their hands which they are authorized or directed to apply for or toward the purposes mentioned in this section.

Investment
of funds.

(5) For the purpose of securing the due performance of such agreement the owner shall invest the money received under the agreement in the same manner as trustees are authorized to invest trust money and out of the income of such investment perform his obligations under the agreement.

Notice to
owner of
bequest or
devise for
perpetual
care.

(6) Every executor and trustee of an estate, the testator or settlor of which has provided a sum of money or other property for the care and upkeep of a plot or plots, or other portion of a cemetery, and the local registrar of the surrogate court from which probate issues, shall notify the owner of such cemetery, of the amount of money or other property so provided for the care and upkeep or other benefits conferred upon the cemetery of such owner immediately upon the issue of probate or at the time when such executor or trustee assumes the burden of the administration of the estate.

(7) The owner may call upon any executor or trustee of the estate of a testator or settlor who has bequeathed or set aside or provided any money or other property for the purpose of the upkeep or care of any lot or plot or portion of a cemetery of such owner for the payment or delivery over to the owner of such money or property to be invested as hereinbefore provided, the income thereof to be used by the owner as provided in the will of the testator or instrument of the settlor, and on default the owner may take out an appointment from the surrogate judge of the county wherein such cemetery is situate directing such executor or trustee to appear before him at such time and place as he shall appoint and upon the hearing, pursuant to such appointment, the judge shall have authority to direct payment or delivery over to the owner of such money or property or make such other disposition thereof in the premises as to him may seem meet in order to carry out fully the intention of the testator or settlor as set forth in his will or other instrument and the costs of and incidental to such application shall be in the discretion of the judge.

Payment or delivery to owner of property devised for perpetual care.

(8) When the amount of the money or the value of the property directed to be delivered over to the owner is \$200 or under, such order may be filed in the division court of the division in which the executor, trustee or settlor resides, and in all other cases in the county court of the county wherein the executor, trustee or settlor resides, and when so filed such order may be enforced in like manner as a judgment of said respective courts.

When amount \$200 or less.

(9) The owner shall not make any charge in connection with the erection of monuments, tombstones, or vaults, except a reasonable charge for opening graves and constructing the foundations, or erecting such monuments, tombstones, or vaults when such erecting is done by the owner. R.S.O. 1927, c. 317, s. 15.

Charges—what may and what may not be made by owner.

(10) Where any money has been deposited with any chartered bank in Ontario to provide a fund to furnish revenue by way of interest or otherwise for the perpetual upkeep of any lot, it shall be lawful for such bank to pay such money to any owner for the purposes for which it was deposited, to be dealt with according to the provisions of this Act, and the owner may give an effectual release to such bank upon receiving such money. 1936, c. 7, s. 3.

Payment of money on deposit in chartered banks.

16.—(1) Where moneys have come into the hands of the owner for the purpose of providing for perpetual care of graves, lots, gravestones or fences, the owner may pay such moneys over to the Public Trustee and the same shall be in-

Owner may pay over "perpetual care" funds to Public Trustee.

vested by the Public Trustee and the income therefrom paid over by him to the owner to be applied for the purposes aforesaid.

Future receipts to be dealt with in same manner.

(2) Where the owner has paid over to the Public Trustee any sum of money under subsection 1, all sums of money thereafter received by the owner for the purposes mentioned in subsection 1 shall be paid over to the Public Trustee and shall be dealt with in the like manner. R.S.O. 1927, c. 317, s. 16.

Right to charge owner with cost of maintenance.

17. The owner of any cemetery which is not operated for gain or profit, may maintain any lot, tomb, monument or enclosure which is not being properly maintained by or on behalf of the owner thereof and the reasonable charges for so doing shall be a debt due by the lot owner to the owner of the cemetery. R.S.O. 1927, c. 317, s. 17.

Power to acquire additional lands, etc.

18.—(1) If additional land is required for the enlargement of a cemetery and the council of the municipality in which the land is situate by by-law declares that in the opinion of the council the owner should, for that purpose, have power to appropriate any adjacent land described in the by-law, and if the Department of Health certifies that in its opinion the proposed enlargement is for the public advantage and convenience and ought to be permitted, the owner, upon registering the by-law and certificate in the proper registry or land titles office, shall, in respect of the land described in the by-law, possess the powers conferred upon the council of a local municipality by *The Municipal Act*.

Rev. Stat., c. 266.

How proceedings to be instituted.

(2) Where the owner not being a municipal corporation desires to proceed under this section proceedings for expropriation may be initiated by notice. R.S.O. 1927, c. 317, s. 18.

Power to make regulations.

19. Subject to the provisions of this Act and to the regulations the owner may make regulations for the laying out and selling of lots and managing the cemetery, for regulating burials therein, the removal of bodies therefrom, the erection or removal of tombs, monuments, gravestones, vaults, copings, fences, hedges or other permanent improvements therein, the planting, placing and removal of trees, shrubs and plants in the grounds, and otherwise generally respecting the use of the grounds, and for the execution of conveyances of lots or plots in the cemetery. R.S.O. 1927, c. 317, s. 19.

Power to borrow.

20. The owner may borrow money for the purpose of making roads in the cemetery and for laying out and improving the same, and for that purpose may mortgage all his estate,

right and interest in the cemetery, but nothing herein shall authorize the mortgagee or anyone claiming under him to use or deal with the cemetery in a manner inconsistent with the continued use of it as a cemetery or inconsistent with any provision in this Act for the preservation and protection of the same for cemetery purposes. R.S.O. 1927, c. 317, s. 20.

21.—(1) The owner shall,—

Duty of owner.

(a) keep and maintain fences about the cemetery sufficient to prevent dogs, cattle or other animals from straying therein; Maintain fences.

(b) keep the cemetery and the buildings and fences thereof in good order and repair; Keep in good order.

(c) see that all burials within the cemetery are conducted in a decent and orderly manner, and that quiet and good order are at all times maintained therein. Conduct of burials.

(2) When there is no person resident in the municipality in which a cemetery is situate in charge of it, the cemetery shall be deemed non-resident land within the meaning of *The Weed Control Act*. Weeds.
Rev. Stat.,
c. 344.

(3) For every default in complying with subsection 1 the owner shall incur a penalty not exceeding \$10, and after conviction thereof shall incur a further penalty of \$5 for every day during which such default continues. R.S.O. 1927, c. 317, s. 21. Penalty.

22. Every owner shall make all necessary sewers and drains in and about the cemetery for draining it and keeping it dry, and may whenever necessary connect any such sewer or drain with an existing sewer with the consent in writing of the municipal corporation or other body or the person owning or controlling the highway, lane or other public communication, or the land of which any part is to be opened up for that purpose, doing as little damage as possible and restoring the same to as good condition as before the opening was made. R.S.O. 1927, c. 317, s. 22. Sewers and drains.

23.—(1) The owner shall not cause or suffer any offensive matter from the cemetery to be brought to or flow into any river, spring, well, stream, canal, reservoir, aqueduct, pond or watering place. No offensive matter to be allowed into rivers, etc.

(2) For every contravention of subsection 1 the owner shall incur a penalty of not more than \$50, and in addition shall be liable for any damages caused thereby to any person having a right to use such water. R.S.O. 1927, c. 317, s. 23. Penalty.
Liability for damages.

Interments
not to be
within 15
feet of
church
walls, etc.

24.—(1) The owner shall not cause or suffer any dead body to be interred in a vault or otherwise under or within fifteen feet of the outer wall of any church, chapel or other building in the cemetery.

Penalty.

(2) For every contravention of subsection 1 the owner shall incur a penalty of not more than \$50. R.S.O. 1927, c. 317, s. 24.

Owner's
name to be
recorded.

25.—(1) The owner shall not permit any burial therein until he has been registered with the Registrar-General, through the division registrar of the municipality in which such cemetery is situate, as the owner of the cemetery.

Penalty.

(2) For every contravention of subsection 1 the owner shall incur a penalty of not more than \$50. R.S.O. 1927, c. 317, s. 25.

Default of
owner.

26. Where the owner neglects to keep it in good order or to erect or maintain fences as required by this Act, the Department of Health may give notice to him to do so, specifying in the notice what he is required to do, and if such owner does not within one month after the notice comply with the requirements of it the Department of Health may cause what should have been done by him to be done at his expense, and may levy the cost thereof by distress and sale of the owner's goods and chattels, or may maintain an action for the recovery thereof. R.S.O. 1927, c. 317, s. 26.

Provision
for sale of
part of lot
where no
interment
made for
20 years.

27.—(1) Where no interment has been made in a plot for more than twenty years and the plot owner has not maintained and kept it in a proper state of repair for more than five years or has made default for more than five years in payment of the maintenance charges referred to in section 17, a judge of the county or district court of the county or district, on the application of the owner of the cemetery and after notice has been given as provided by subsection 2 and on being satisfied that the facts are as above set out may authorize the owner of the cemetery to sell and convey that part of the plot in which no interment has been made and the proceeds of any such sale except as otherwise provided in subsection 3 shall be invested and the income derived therefrom shall be applied to the perpetual care and maintenance of that part of the plot in which an interment has been made.

Notice of
application.

(2) Where the plot owner resides in the county or district to the knowledge of the owner of the cemetery, notice of the application shall be delivered to him personally or sent to his address by registered letter post at least four days before the time fixed for hearing the application and where he resides in

some other county or district in Ontario and his place of residence is known by the owner of the cemetery the notice shall be sent to the address of his residence by registered letter post at least ten days before the time fixed for the hearing, and where the place of his residence is not in Ontario or is unknown the judge may direct what notice, if any, shall be given.

(3) Where the owner of a cemetery which is not operated for gain or profit maintains a fund for the perpetual care of the cemetery, and plots or parts of plots are sold under the provisions of this section, then the owner shall apply the proceeds received from such sale, or so much as may be available, in the following order and priority:

Where fund for perpetual care, maintained and lots sold.

Firstly.—In reduction or satisfaction of all arrears due to the owner for the maintenance charges referred to in subsection 1.

Secondly.—In providing for the perpetual care of that part of the lot in which an interment has been made.

Thirdly.—Any balance remaining to be carried to the credit of the perpetual care fund maintained by such cemetery. R.S.O. 1927, c. 317, s. 27.

28. Where the owner of a cemetery is an incorporated company or a municipal corporation it shall provide graves for strangers and for the indigent free of charge, but an incorporated company shall not be bound to do so in the case of an indigent except upon the certificate of a member of the council of the municipality or of a minister or clergyman that the relatives of the deceased are poor and cannot afford to purchase a lot in the cemetery. R.S.O. 1927, c. 317, s. 28.

Graves to be provided for strangers and indigents free of charge.

DISINTERMENT AND REMOVAL OF REMAINS.

29.—(1) The dead body of a person who has died of smallpox, scarlet fever, measles, diphtheria, croup, bubonic plague, cholera, epidemic cerebro spinal meningitis, or epidemic anterior poliomyelitis shall not be disinterred, except for the purpose of transportation or reinterment and in conformity with the regulations.

Disinterment in cases of certain contagious diseases.

(2) No such dead body shall be transported by railway, steam or other vessel, or other public conveyance unless prepared in the manner provided by the regulations, and enclosed in a hermetically sealed coffin which shall not be subsequently opened. R.S.O. 1927, c. 317, s. 29.

Transport of dead body by railway, etc.

30.—(1) No dead body shall at any time be disinterred or removed from the grave, place of burial or vault, other than

Disinterment of dead body.

a receiving vault, except under and subject to the regulations and under the personal supervision and direction of the medical officer of health.

Certificate
of medical
officer of
health.

(2) The certificate of the medical officer of health that the provisions of this Act and of the regulations have been complied with shall be affixed to the coffin or other receptacle containing the dead body before its removal from the cemetery.

Penalty.

(3) Every person who disinters or removes from any such grave, place of burial or vault any dead body except as hereinbefore provided, and every person who conveys or transports any such body in contravention of the provisions of this Act shall incur a penalty of \$100. R.S.O. 1927, c. 317, s. 30.

Prevent-
ing escape
of noxious
or un-
healthy
gases.

31. Every human body interred in a cemetery, which is not placed or buried in a private vault so constructed as to prevent the escape of noxious or unhealthy gases therefrom, shall be buried so that the outside cover or shell of the coffin or other receptacle shall be at least four feet beneath the natural surface of the ground, and the coffin or other receptacle shall be immediately covered with at least four feet of earth. R.S.O. 1927, c. 317, s. 31.

Order for
disinter-
ment by
court.

32.—(1) Notwithstanding anything herein contained, where it is deemed necessary to disinter any dead body for the purpose of a judicial proceeding, the court in which the proceeding is pending may direct its disinterment under and subject to such conditions as to reinterment as may be deemed proper.

Order
by the
Attorney-
General.

(2) Where the Attorney-General deems it expedient for the purpose of an inquiry as to the cause of death or for the purpose of any criminal proceeding that a body should be disinterred he may exercise the powers mentioned in subsection 1.

Disinter-
ment for
inquest.

(3) A coroner who has issued his warrant for the holding of an inquest upon a dead body may direct it to be disinterred. R.S.O. 1927, c. 317, s. 32.

CLOSING CEMETERIES.

Closing
cemetery
for defec-
tive drain-
age, etc.

33. Where the Department of Health reports in writing that a cemetery is so situated that, owing to the want of proper facilities for drainage or from any other cause, the same has become or is likely to become dangerous to the health of the inhabitants of the locality the Lieutenant-Governor in Council may by proclamation declare that the cemetery shall be closed and that no further interments shall take place therein. R.S.O. 1927, c. 317, s. 33.

34.—(1) Whenever,—

- (a) a cemetery has been closed by proclamation of the Lieutenant-Governor in Council as hereinbefore provided; or
- (b) the owner of a cemetery establishes to the satisfaction of the Lieutenant-Governor in Council that it is expedient that the bodies therein should be removed therefrom;

Removal of
bodies and
reinterment
in another
cemetery.

the Lieutenant-Governor in Council may direct such removal in the manner and according to the procedure provided by this section.

(2) Before the application for an order under clause *b* of subsection 1 is granted the owner shall give notice of the application once a week for four successive weeks in the *Ontario Gazette* and in a newspaper published in the local municipality in which the cemetery is situate, or if there is no such newspaper then in a newspaper published in the county or district town, and by registered letter addressed to every plot owner in the cemetery whose address is known or can be ascertained by the owner.

Notice of
application.

(3) After the making of the order the owner shall forthwith give notice thereof by publication once a week for at least two successive weeks in the *Ontario Gazette* and in a newspaper published in the local municipality in which the cemetery is situate, or if there is no such newspaper then in a newspaper in the county or district town, that he will, at the expiration of thirty days from the publication of the last of such notices, disinter and remove such bodies and reinter them in the place described in the notice which shall be in some cemetery in the same or in an adjacent municipality.

Notice of
order to be
published.

(4) At the expiration of the time fixed by such notice any bodies not removed by the relatives or friends of the deceased may be removed by the owner at his own expense, and when removed shall be reinterred by him in the cemetery mentioned in the notice.

Time of
removal,
and duties
of owner.

(5) The provisions of sections 29, 30 and 31 shall apply to such disinterment, removal and reinterment.

Ss. 29,
30 and 31
to apply.

(6) The owner shall remove all monuments or headstones or other stones marking the graves in which bodies so removed are buried, and shall re-erect or replace them in the cemetery to which such bodies are removed.

Removal
and re-
erection of
monu-
ments, etc.

Certificate
of
judge
as to
compliance
with
section.

(7) If and when the owner satisfies a judge of the county or district court of the county or district that he has removed from the cemetery and reinterred as hereinbefore provided all the remains which with the exercise of reasonable diligence he has been able to find buried in such cemetery, the judge may certify that the provisions of this section have been complied with and such certificate may be registered in the proper registry or land titles office on the production thereof.

Effect of
certificate.

(8) The certificate when so registered shall be conclusive evidence that the owner has removed from the land therein described all the remains there buried, and thereafter such land shall not be deemed a cemetery within the meaning of this Act but may be sold, leased or otherwise disposed of and dealt with by the owner as if it had not been a cemetery. R.S.O. 1927, c. 317, s. 34.

MISCONDUCT IN CEMETERY.

Prohibi-
tions.

35.—(1) No person shall,—

Injuring
property.

(a) wilfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone or other structure placed in a cemetery, or any fence, railing or other work for the protection or ornament of a cemetery, or of any such tomb, monument, gravestone or other structure or of any lot within a cemetery; or

Idem.

(b) wilfully destroy, cut, break, or injure any tree, shrub or plant in a cemetery, or wilfully injure, destroy or deface any building or structure or any road, walk or other works in the cemetery;

Playing
games, etc.

(c) play at any game or sport in a cemetery; or

Discharg-
ing fire-
arms.

(d) discharge firearms in a cemetery except at a military funeral; or

Disturbing
funerals.

(e) wilfully and unlawfully disturb persons assembled for the purpose of burying a body therein; or

Committing
nuisance.

(f) commit a nuisance in a cemetery.

Penalty.

(2) Every person who contravenes the provisions of subsection 1 shall incur a penalty of not less than \$4 nor more than \$40.

Animals.

(3) No person shall bring any dog, goat, or cattle within the limits of a cemetery, and every person so doing shall incur a penalty of not more than \$20.

Liability
to action.

(4) Every person who contravenes subsection 1 or subsection 3 shall also be liable in an action in the name of the owner

of such cemetery or of a burial plot upon which such damage is done or other unlawful act committed to pay all damages occasioned by his unlawful act, and when recovered, the same shall be applied under the direction of the owner of the cemetery for the reparation and reconstruction of the property destroyed. R.S.O. 1927, c. 317, s. 35.

PART II.

POWERS OF MUNICIPAL CORPORATIONS.

36.—(1) Where the owner of a cemetery cannot be found or is unknown or is unable to maintain it, the council of the local municipality in which the cemetery is situate shall be charged with the duty of maintaining it and the corporation of the local municipality shall for the purposes of this Act be deemed to be the owner of the cemetery. R.S.O. 1927, c. 317, s. 36 (1). When municipality to maintain cemetery.

(2) Where the council of a municipality neglects or refuses to properly maintain a cemetery under the provisions of this section, the commission shall give notice in writing to the corporation directing the corporation to do whatever, in the opinion of the commission, should be done by the owner of a cemetery for the proper maintenance thereof, and in case of disobedience to any such order, the commission may cause the necessary work to be done and the treasurer of the municipality shall pay the cost of such work, upon the order of the chairman of the commission, to the persons entitled thereto. 1931, c. 68, s. 4. Refusal or neglect to maintain cemetery.

37.—(1) Subject to the provisions of Part I and to the regulations, the council of every local municipality and the trustees of every police village may pass by-laws for,— By-laws.

- (a) making an annual or other grant of money to the owner of a cemetery situate in the municipality or the police village, or in any adjacent municipality or police village; Making annual grants, etc.
- (b) regulating funerals and the interment of the dead; Regulating funerals, etc.
- (c) acquiring land in the municipality or in the police village or in an adjacent township for a cemetery, or for the enlargement of an existing cemetery of which the corporation is the owner; Acquiring land.
- (d) selling or leasing portions of such land for the purpose of interment in family vaults or otherwise, and Selling plots, etc.

fixing the terms on which the same shall be conveyed or leased and held;

Maintenance, regulation and control of cemetery.

- (e) the maintenance, management, regulation and control of any cemetery which is owned by the corporation or the trustees whether situate within or without the municipality or police village. R.S.O. 1927, c. 317, s. 37.

By-law to be approved by the commission.

- (2) No such by-law shall come into force or take effect until the same has been approved in writing by the commission. 1931, c. 68, s. 5.

By-laws, prohibiting the interment of the dead.

- 38.** The council of every urban municipality and the trustees of every police village may pass by-laws for prohibiting the interment of the dead within the municipality or police village. R.S.O. 1927, c. 317, s. 38.

Power to sell to municipal corporation.

- 39.** The owner of any existing cemetery or of any land held for cemetery purposes may sell or transfer the same to any municipal corporation, or the trustees of any police village, and if the land has not been used for burial purposes, the corporation may sell the same and acquire other land in lieu of it. R.S.O. 1927, c. 317, s. 39.

Council of city or town may transfer cemetery to board of park management.

- 40.** The council of any city or town for which there is a board of park management established under *The Public Parks Act* may by by-law transfer the control and management of a cemetery vested in the corporation of the municipality to such board, and thereafter the cemetery shall be vested in the board of park management and the board shall have the control and management of the cemetery and shall be responsible for the maintenance thereof in the same manner and to the same extent as a municipal corporation owning and maintaining a cemetery under the provisions of this Act. R.S.O. 1927, c. 317, s. 40.

Rev. Stat., c. 285.

Cemetery board in city and town.

- 41.** The council of any city or town owning or controlling a cemetery situated either within or outside the limits of such city or town, may by by-law transfer the control and management of such cemetery to a board consisting of not less than three nor more than seven persons who shall hold office during the pleasure of the council and may by such by-law define the duties and powers of such board. 1936, c. 7, s. 4.

Township cemetery board.

- 42.** — (1) The council of a township may by by-law appoint a board consisting of not less than three nor more than seven persons who shall hold office during the pleasure of the council, and may by the by-law provide that the board shall have and may exercise within the municipality all the

powers and perform all the duties of a municipal council with respect to cemeteries within the township, including the powers and duties mentioned in section 36.

(2) The board shall be a corporation by the name of "The Cemetery Board of the Township of _____" and Board to be a corporation. the ownership and control of the cemeteries owned or controlled by the corporation of the township shall be vested in the board.

(3) The council of a village shall have the like powers as Cemetery board in village. are conferred on townships by subsections 1 and 2 not only with respect to cemeteries in the village, but also as to cemeteries outside the village owned and controlled by the corporation of the village. R.S.O. 1927, c. 317, s. 41.

43.—(1) The council of every county shall appoint a committee to be known as "The *(insert name of county)* War Memorial Committee" to take charge of monuments, tablets and other memorials established or erected within the county in commemoration of the nursing sisters, officers and men of His Majesty's forces who served, were wounded, killed or died during the Great War, 1914-1918, except only such monuments, tablets, and other memorials as are being cared for by municipalities, churches or other organizations. War memorial committee.—appointment of.

(2) The committee to be appointed under subsection 1 shall be composed of five persons of whom two shall be members of the county council and the members of the committee shall serve without remuneration. Committee to serve without remuneration. 1933, c. 5, s. 3.

PART III.

TRUSTEES OF CEMETERIES.

44.—(1) Where the inhabitants of a township or part of a township to the number of ten or more desire to take a conveyance of land for a cemetery not for the exclusive use of any particular religious body, they may appoint trustees to whom and their successors appointed in the manner provided by the conveyance, the land may be conveyed. When lands for cemetery may be vested in trustees.

(2) Such trustees and their successors in perpetual succession, by the name expressed in the conveyance, may take, hold and possess the land in trust for the uses and purposes mentioned therein and may maintain and defend actions for the protection thereof and of their property therein. Trustees to hold in perpetual succession.

(3) There shall not be held in trust under any such conveyance more than ten acres. R.S.O. 1927, c. 317, s. 42. Limitation to 10 acres.

Cemetery trustees may be empowered to take over other cemeteries.

45. Where trustees have been appointed to take a conveyance of land for cemetery purposes in any township or village, and have acquired land in the township or village for cemetery purposes, and there is in the township or village other land which has been used as a cemetery and no provision has been made for the appointment of trustees for such last mentioned land, and there is no person upon whom the duty of maintaining and caring for the land rests, and the owner of such land is absent or unknown, the Ontario Municipal Board, upon the application of the trustees and after the giving of such public notice as the Board may deem sufficient, may make an order vesting such last-mentioned land in the trustees, and upon the registration of such order in the proper registry office, the land shall be vested in the trustees, and they shall have and perform the same powers and duties with respect thereto as with respect to other lands conveyed to them for cemetery purposes. R.S.O. 1927, c. 317, s. 43.

Closing road allowance.

46. Where a road allowance which has not been opened for travel passes through lands used for cemetery purposes or separates or lies between lands used for cemetery purposes, and other lands vested in the trustees under section 45, or conveyed to them, the Ontario Municipal Board, upon the application of the trustees, and after notice to the council of the municipality and upon being satisfied that it is in the public interest that such road allowance should be closed and that the portion thereof which passes through or adjacent to the cemetery lands should be vested in the trustees, may make an order closing such road allowance and vesting so much thereof as passes through or adjoins the cemetery lands in the trustees, and upon the registration of such order in the proper registry office, the lands described in the order shall be vested in the trustees for cemetery purposes. R.S.O. 1927, c. 317, s. 44.

Election of trustees when no other provision made.

47.—(1) Where land has been set apart or sold for cemetery purposes and used as a cemetery and no provision has been made for the appointment of trustees of such cemetery, or where there is no person upon whom the duty of taking care of and maintaining a cemetery rests, the owners of plots therein may elect trustees in the manner hereinafter provided.

For calling meeting.

(2) Three or more of such owners may call a meeting for the purpose of electing trustees by notice (Form 1) to be published once a week for two successive weeks in a newspaper published in the local municipality in which the cemetery is situate, or if no newspaper is published in the local municipality, then in the newspaper published nearest to the local municipality.

(3) The date of the meeting shall not be less than two weeks from the date of the last publication of such notice. Date of meeting.

(4) At the time and place named in the notice, the plot owners present shall elect from among themselves some person to act as chairman, and shall also elect some person to act as secretary for the meeting. Chairman and secretary.

(5) After the election of the chairman and secretary, the members present shall elect from among the plot owners three persons to be trustees of the cemetery. Three trustees to be elected.

(6) After the election of the trustees, the chairman and secretary shall certify as to such election (Form 2). Certificate of election.

(7) The certificate shall be in triplicate, and one of such triplicates with an affidavit of execution thereof in the form prescribed by *The Registry Act* shall be registered in the proper registry or land titles office, and one of such triplicates shall be filed with the clerk of the local municipality in which the cemetery is situate, and one of such triplicates shall be delivered to the trustees. Registration and filing of certificate. Rev. Stat., c. 170.

(8) Upon the registration of the certificate, the cemetery shall be vested in the trustees so appointed and their successors subject to the provisions of any deed or other instrument setting it apart for cemetery purposes or conveying the same or any plot therein for cemetery purposes, and subject to the rights of any person who may have theretofore purchased plots in such cemetery and to the provisions of this Act. Effect of registration.

(9) The trustees elected and their successors shall be deemed to be the owners of the cemetery within the meaning of this Act. Trustees deemed owners.

(10) Whenever a vacancy occurs in the office of trustee, whether originally elected or elected to fill a vacancy, his successor shall be elected, and his election shall be certified and the certificate shall be registered in the manner hereinbefore provided in the case of a first election of trustees. R.S.O. 1927, c. 317, s. 45. Vacancies among trustees.

48.—(1) When adjoining cemeteries are owned by separate boards of trustees or companies, they may appoint trustees to whom and to their successors, appointed in the manner provided by the conveyance, all or any of the land vested in the appointing bodies may be conveyed, and the same may be conveyed accordingly and the trustees appointed by such conveyance and their successors in perpetual succession, by the name expressed in the conveyance, may take, hold and possess the land thereby or thereafter conveyed to them as a site for a Adjoining cemeteries.

cemetery and for the enlargement of an existing cemetery, and maintain and defend actions for the protection thereof and of their property therein.

Cemeteries
may be
vested in
company.

(2) Instead of appointing trustees as provided by subsection 1, the cemeteries may be conveyed to and vested in the company or in one of the companies upon such trusts, if any, as the appointing bodies may deem proper. R.S.O. 1927, c. 317, s. 46.

PART IV.

CREMATORIA.

Establish-
ment of
crematoria.

49. The powers of an owner of a cemetery shall be deemed to extend to and include the provision and maintenance of crematoria and columbaria and the disposal of the bodies of deceased persons by cremation or incineration, and the provision of such fixtures, appliances and facilities as may be deemed necessary in order that such cremation or incineration may be carried on in accordance with accepted scientific principles. 1932, c. 40, s. 3, *part*.

Regulation
of cremation
and disposal
of ashes.

50. The owner shall, subject to approval of the Lieutenant-Governor in Council, have power from time to time to frame by-laws, rules and regulations for the reception, cremation or incineration of the bodies of deceased persons, for the deposit of ashes remaining therefrom in a suitable columbarium or for otherwise disposing of the same, and for the fees and rates to be charged. 1932, c. 40, s. 3, *part*.

Medical
certificate.

51. No body shall be cremated unless a certificate and permit similar to that now required for burial has been produced nor within forty-eight hours after decease, unless death has been occasioned by a communicable disease subject to quarantine and placard according to the provisions of *The Public Health Act* and regulations passed under authority thereof, and so certified by a duly qualified medical practitioner, in which case a duly constituted local board of health may order that the body of the deceased shall be cremated forthwith. 1932, c. 40, s. 3, *part*.

Rev. Stat.,
c. 299.

Coroner's
certificate.

52. No body shall be cremated unless and until a certificate in the prescribed form, signed by a duly qualified coroner of the municipality in which the death took place, has been deposited with the owner, which certificate shall contain the statement that the cause of death has been definitely ascertained and that there exists no reason for further inquiry or examination. 1932, c. 40, s. 3, *part*.

53. The owner shall have the right to refuse to cremate in any case without assigning reasons. 1932, c. 40, s. 3, *part*. Right to refuse cremation.

54. The Lieutenant-Governor in Council shall from time to time have the right to make such rules and regulations as may be deemed advisable for the better carrying out of the provisions of this Act. 1932, c. 40, s. 3, *part*. Right of the Lieutenant-Governor in Council to make regulations.

55. The provisions of sections 2, 3, 4, 5, 6 and 7 shall apply to crematoria or columbaria, in the same manner as the said sections apply to a cemetery. 1932, c. 40, s. 3, *part*. Approval of site, etc., by Department.

SCHEDULE.

FORM 1.

(Section 47.)

Take notice that a meeting will be held at (*naming a place in the local municipality in which the cemetery is situate*) at in the _____ of _____ on the _____ day of 19____, at the hour of _____ o'clock in the _____ noon, for the purpose of electing trustees for the cemetery (*here insert description of land sufficient for the purpose of registration and name or designation, if any, of the cemetery*). The owners of plots are requested to attend the meeting.

Dated at _____ the _____ day of _____, 19____. A.B., C.D., E.F.,
Plot Owners.

R.S.O. 1927, c. 317, Schedule, Form 1.

FORM 2.

(Section 47.)

We hereby certify that at a meeting of the owners of plots in the cemetery (*here insert description of land sufficient for the purpose of registration and the name or designation, if any, of the cemetery*), of _____, held pursuant to the provisions of *The Cemetery Act*, at _____, on the _____ day of _____, 19____, the following persons were elected trustees of the cemetery:

A.B.,	of
C.D.,	of
E.F.,	of

(*insert place of residence and occupation of each trustee.*)

Witness:

Chairman.
Secretary.

R.S.O. 1927, c. 317, Schedule, Form 2.